

## **REMARKS**

Claims 2-21, 23-26, 28-35, 37, 38, 40-42, 44, 45, 47, 48 and 51-61 are all the claims pending in the application.

### **I. Claim Rejection under 35 U.S.C. § 101**

Claims 2-21, 53 and 61 have been rejected under 35 U.S.C. §101 as not being directed to statutory subject matter. In particular, the Examiner asserts that claim 53 is directed to an optical disk including only non-functional descriptive material (e.g., music on a recordable medium).

Applicants respectfully disagree with the Examiner's position.

Claim 53 recites, in part, an optical disk including a first recording area for recording contents data and data for recording and reproducing the contents data; a second recording area for recording secondary data related to the contents data; a first section for recording control data; and a second section for recording data not to be inhibited from being outputted from a reproducing apparatus, wherein the control data includes an identifier indicating whether the second recording area includes a third section for recording data to be inhibited from being outputted from the reproducing apparatus.

MPEP §2106(IV) discusses the guidelines for determining whether or not a computer-related invention is patentable subject matter under 35 U.S.C. §101. This section indicates that “[d]escriptive material can be characterized as either “functional descriptive material” or “nonfunctional descriptive material”.

In particular, as explained in MPEP 2106(IV)(B)(1), “non-functional descriptive material” includes music, literary works and a compilation or mere arrangement of data, whereas

“functional descriptive material” includes data structures which impart functionality when employed as a computer component (where the phrase “data structure” is defined as a physical or logical relationship among data elements, designed to support specific data manipulation functions).

Applicants respectfully submit that claim 53 clearly includes data structures which impart functionality when employed as a computer component. For example, claim 53 recites the feature of a first recording area that includes contents data as well as data for recording and reproducing the contents data. Accordingly, as there is a logical relationship between the contents data and the data for recording and reproducing the contents data, and a specific data manipulation function is supported (i.e., recording and reproducing the contents data), such data is clearly a “data structure” according to the guidelines set forth in the MPEP, and cannot merely be considered the same as “music” or a “literary work”.

In addition, the “control data” as recited in claim 53 is clearly also a data structure which imparts functionality when employed as a computer component, since the “control data” is used by the reproducing apparatus to determine whether or not there is data present that is inhibited from being output from the reproducing apparatus. Thus, the “control data” as recited in claim 53 is clearly used to support a specific data manipulation function; namely, to determine whether the optical disk contains a section which includes data that is inhibited from being output from the reproducing apparatus.

In view of the foregoing, it is clear that claim 53 includes “functional descriptive material” in the form of data structures, and does not merely include “non-functional descriptive material” such as music and literary works.

Further, Applicants note that MPEP 2106(IV)(B)(1)(a) sets forth that “a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure’s functionality to be realized, and is thus statutory” (emphasis added).

Accordingly, as claim 53 is drawn to a computer readable medium (i.e., optical disk) that plainly includes data structures, as discussed above, Applicants respectfully submit that claim 53 is directed to statutory subject matter according to the guidelines set forth in the MPEP, and therefore, kindly requests that the rejection be reconsidered and withdrawn.

Claims 2-21 and 61 depend from claim 53 and are there considered patentable at least by virtue of their dependency.

## **II. Claim Rejections under 35 U.S.C. § 112, second paragraph**

The Examiner has rejected claim 61 under 35 U.S.C. § 112, second paragraph as being indefinite. In particular, the Examiner has indicated that the phrase “the third data” does not have proper antecedent basis.

Applicants thank the Examiner for pointing out the improper antecedent basis in claim 61. Accordingly, Applicants have amended claim 61 in a manner to overcome this rejection. Thus, Applicants respectfully request that the rejection be reconsidered and withdrawn.

### **III. Allowable Subject Matter**

Applicants thank the Examiner for indicating that claims 23-26, 28-35, 37, 38, 40-42, 44, 45, 47, 48 and 51-60 are allowed. Applicants note that claims 53-60 have been amended herein to improve their form and to clarify the present invention. Applicants submit that such changes do not affect the patentability of the claims over the cited prior art references, and therefore, respectfully submits that claims 23-26, 28-35, 37, 38, 40-42, 44, 45, 47, 48 and 51-60 are still clearly in condition for allowance, an indication of which is respectfully requested.

### **IV. Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may best be resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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